

STATE OF MAINE
OFFICE OF SECURITIES
121 STATE HOUSE STATION
AUGUSTA, ME 04333-0121

IN RE:

Paul J. Pombriant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Case No. 06-066

After considering the hearing officer's proposed findings of fact, conclusions of law, and disposition; exceptions of Respondent Paul J. Pombriant (CRD # 2313305) to the hearing officer's proposals; and the complete record, the Securities Administrator now makes final findings of fact and conclusions of law and orders Mr. Pombriant barred from associating with any issuer, broker-dealer or investment adviser for a period of 90 days.

DISCUSSION

The final findings of fact and conclusions of law set forth below track closely with those proposed by the hearing officer. Although all of the findings and conclusions proposed by the hearing officer are fully supported by the record, some are omitted in whole or in part here because they are not necessary to the decision.

Mr. Pombriant's exception to proposed finding of fact 7 is rejected because credible testimony from Michael Poulin fully supports this finding. Mr. Poulin's testimony in general was supportive of Mr. Pombriant and demonstrated that, although licensed by the Office of Securities, Mr. Poulin was not fearful of testifying in opposition to positions taken by the staff. Furthermore, in contrast to Mr. Pombriant, Mr. Poulin has no stake in the outcome of this action and thus no incentive to testify less than truthfully on this point.

Mr. Pombriant's exceptions to proposed findings of fact 11 and 14 also are rejected because the proposed findings are fully supported by the evidence, including Mr. Pombriant's own testimony. (*See* Tr. 183, 187-88, 207.) The proposed references to 911 and to Jacqueline Drouin picking up the phone are omitted from the final findings because Mr. Pombriant disputes them and because they do not change the essential nature of the encounter.

Mr. Pombriant's exception to proposed finding of fact 14 seems to request a finding that Ms. Drouin's feelings of intimidation were objectively unreasonable; however, the evidence does not support such a finding. Ms. Drouin testified persuasively that she was "very, very intimidated" and that the intimidation was not mitigated by the

presence of Willis Smedberg because Mr. Pombriant would not listen to Mr. Smedberg. (Tr. at 21-22, 49-50.)

Mr. Pombriant's purported exceptions to the proposed conclusions of law do not actually address any of the proposed conclusions, and thus these exceptions also are rejected.

The exception titled "Refusal of Access" states that "[t]he hearing officer's proposed findings left out a very important aspect of what happened next." The exception then discusses an "appointment with a client" that allegedly caused Mr. Pombriant to delay providing access to his files to the examiners. However, the record is devoid of any evidence that Mr. Pombriant's appointment was with a client. Mr. Pombriant's own testimony was that the appointment was with "a friend of mine." (Tr. at 203-04.) In any event, whether the appointment was with a client does not excuse or significantly mitigate Mr. Pombriant's conduct between 9:10 a.m. and 11:15 a.m. on the morning in question.

Finally, with respect to the appropriate sanction, a disciplinary penalty in the nature of a limited bar is appropriate to deter Mr. Pombriant and other licensees from similar conduct and to recognize the seriousness of the violations Mr. Pombriant committed. Mr. Pombriant has displayed a troubling disregard for his legal obligations as a securities licensee. This disregard was demonstrated by his refusal to permit the examiners access to his files, his confrontational behavior with the examiners during their first three encounters on the day in question, the lengthy period of time (over two hours) before he took any action to resolve the situation, and his "sloppy" recordkeeping practices that resulted in twenty missing new account forms.

There are three types of disciplinary penalties available: a censure, a civil penalty of a maximum of \$5,000 for each of the two violations, and a bar. 32 M.R.S.A. § 16412(3). A censure or the modest civil penalty available is unlikely to impart on Mr. Pombriant and others the seriousness of the conduct here. If able to return to the securities business forthwith, Mr. Pombriant is likely to feel vindicated in his view, which persisted throughout this proceeding, that he has done nothing wrong and is merely the victim of vindictive examiners. (*See, e.g.*, Tr. at 196.) On the other hand, a permanent bar seems excessive in light of the mitigating factors that Mr. Pombriant has never had a customer complaint or prior discipline, no customers were directly harmed by the violations here, and Mr. Pombriant already has suffered termination by Investacorp for the same conduct. Accordingly, a limited bar as proposed by the hearing officer is appropriate.

FINDINGS OF FACT

1. In February and March of 2006, the Office of Securities examined the Lewiston office of Investacorp, Inc. ("Investacorp"), a Maine-licensed broker-dealer. The examination was carried out by Jacqueline Drouin ("Drouin") and Willis Smedberg ("Smedberg"), both of whom are, and at the time of the examination were,

investigator/examiners for the Office of Securities. Drouin has been an examiner for nine years and Smedberg for six. Drouin has conducted at least 40 examinations.

2. At the time of the examination, the branch manager for Investacorp's Lewiston office was Michael J. Poulin ("Poulin"). Poulin, who testified as a witness for Paul J. Pombriant ("Pombriant") at the hearing in this matter, had been in business with Pombriant since the late 1970's and considers him to be both a colleague and a friend.

3. At the time of the examination, Pombriant was a Maine-licensed agent of Investacorp in its Lewiston office and was subject to the supervision of Poulin.

4. At the time of the examination, Pombriant was residing in an apartment in Lewiston in the same building in which the Investacorp offices are located. The building is owned by Poulin. Investacorp occupies the first floor and part of the second, with the rest of that floor rented to others. From the back of the second floor, there are stairs leading to the third floor, which is where Pombriant's apartment was located.

5. At the time of the examination, Pombriant was in the process of relocating from an office he used on the second floor to his apartment on the third. Pombriant had decided to spend part of the year in Maine and the rest in the south, and as a result he and Poulin had agreed that Pombriant would vacate his second floor office so it could be rented out by Poulin. At the time of the examination, at least some of Pombriant's client files had been moved to his apartment. Pombriant did not use his apartment for meetings with clients; those were still conducted in the second floor office.

6. It was the view of Investacorp that Pombriant's apartment served as an office for purposes of his securities business and that both Investacorp and the Office of Securities were entitled to access the apartment for purposes of performing their oversight roles. Poulin had a key to the apartment for that purpose as well as if he needed to gain entry as Pombriant's landlord.

7. The understanding between Poulin and Pombriant regarding the use of the apartment and the presence of a file cabinet with client files demonstrate that at the time of the examination Pombriant's apartment served as an office as well as a residence.

8. On the morning of the second day of the examination, the examiners indicated to Poulin that they wished to inspect Pombriant's client records and were told by Poulin that they were in Pombriant's apartment. It was decided that Poulin would accompany the examiners to the apartment. Poulin requested that the examiners give Pombriant advance notice that they were coming to see his records, a request that was denied by Drouin. It is the policy of the Office of Securities not to give such notice except in limited circumstances that do not apply here.

9. Although recollections differ as to the time when Drouin, Smedberg, and Poulin went to Pombriant's apartment, it most likely occurred at or before 9:10 a.m.

10. On going into Pombriant's apartment, either Drouin or Poulin knocked on his door and indicated that the examiners were there to review his files. Pombriant opened the door a crack and told the examiners they could not come in. Pombriant then closed and locked the door. Although recollections differ as to certain aspects of the interaction between Pombriant and the others, Pombriant's reaction to the request to examine the files in his apartment was at least abrupt, if not hostile. Poulin described that reaction as follows: "I remember a few words, there's no way you're coming in here, slam, click, and the door locked." (Tr. at 157.)

11. At the time the examiners knocked on his door, Pombriant had just finished exercising and was in his underwear. He did not, however, say anything to the examiners to the effect that he would allow them entry if they would return later or give him an opportunity to dress.

12. After the above incident, the examiners returned to the room on the second floor that Investacorp had given them to use during their examination.

13. Shortly after the above incident, Poulin faxed a letter to the Investacorp home office requesting that Investacorp terminate Pombriant as an agent because of his failure to allow the examiners access to his apartment to inspect his records.

14. After showering and dressing, Pombriant came to the room in which the examiners were working. He was in a highly agitated state. According to his own testimony, his initial statement to them at this time was "who do you think you are." He challenged the examiners' right to gain entry to his apartment, demanding to know their authority to do so and telling them that it was unconstitutional and that they needed a search warrant. During this time, he approached Drouin in what she viewed as a very intimidating manner. Pombriant ignored three requests from Smedberg to leave the room. He left only after one of the examiners made a statement about calling the police.

15. The examiners subsequently encountered Pombriant on the first floor of the building, at which time he again protested their effort to gain entry to his apartment.

16. At approximately 11:15 a.m., Pombriant telephoned Randy Nestel, the chief of compliance for Investacorp, who advised him it would make matters easier for Poulin if he would allow the examiners access to his apartment to examine his files. Later that day, the examiners were notified that they could go into the apartment and examine the files Pombriant kept there. When they gained entry after lunch, they found a file cabinet and files for at least some of Pombriant's securities clients. At that time, Pombriant was fully cooperative and friendly, even offering the examiners coffee.

17. Early in the examination process, the examiners requested and received from Poulin's secretary a list of Pombriant's current clients. After comparing Pombriant's files given to them at the examination against this list, they determined that some files were missing altogether and others were missing new account forms. After this proceeding commenced, Investacorp provided information, in part through the testimony

of Poulin, that at least one of the names on the list had never been a Pombriant client, some were not currently his clients, and some were clients he shared with Poulin. In addition, during the course of this proceeding, Investacorp provided new account forms that were not furnished during the examination.

18. On October 26, 2006, to refute the Office of Securities' evidence of missing client files, Pombriant submitted for the record, through counsel, a letter enclosing "26 new account forms for Mr. Pombriant's clients" and "[l]etters from Michael Poulin to 13 of Mr. Pombriant's clients, in which Mr. Poulin transitions these clients from Mr. Pombriant and has these clients sign separate new account forms." In his letter transmitting these documents, Pombriant's counsel states that this leaves only one new account form "unaccounted for." In fact, all of the Poulin letters were dated after the examination and six of the "26 new account forms for Mr. Pombriant's clients" post dated the examination.

19. Based on all of the information provided by Investacorp and Pombriant, twenty of Pombriant's clients were missing new account forms.

20. Pombriant's record-keeping practices were described both by Poulin and Pombriant as "sloppy."

21. Based on the evidence in the record, Pombriant neither expressed an intent to destroy files nor actually destroyed any files.

22. Pombriant has not been the subject of customer complaints or prior disciplinary action.

Conclusions of Law

1. In carrying out the examination that gave rise to this proceeding, the examiners were engaged in the lawful exercise of their authority under 32 M.R.S.A. § 16411(4). The decision not to give prior notice before going to Pombriant's apartment was fully consistent with the statute, which provides that "[a]n audit or inspection may be made at any time and without prior notice."

2. Pombriant refused to allow the examiners access to his apartment to examine the records that he kept there, thereby violating, and providing grounds for disciplinary action under, 32 M.R.S.A. § 16412(4)(H).

3. Pombriant failed to keep records that he was required by law to maintain, thereby violating, and providing grounds for disciplinary action under, 32 M.R.S.A. § 16412(4)(M).

4. The authority of the Office of Securities to conduct examinations and the obligation of licensees to maintain records are both integral parts of the regulatory scheme established by the Legislature to protect Maine investors. That consideration and

the seriousness of the conduct in this case justify the conclusion that the public interest would be served by taking disciplinary action against Pombriant as ordered below.

ORDER

Pursuant to 32 M.R.S.A. § 16412(3), Respondent Paul J. Pombriant hereby is BARRED from associating with any issuer, broker-dealer, or investment adviser for a period of 90 days from the date of this order.

Any party may obtain judicial review of this order in the Kennebec County Superior Court by filing a petition within thirty (30) calendar days after receipt of the order, in accordance with 5 M.R.S.A. §§ 11001-11008, 32 M.R.S.A. § 16609, and Rule 80C of the Maine Rules of Civil Procedure.

Date: November 29, 2006

s/Michael J. Colleran
Michael J. Colleran
Securities Administrator